

INFORMATION BULLETIN #72

INCOME TAX

SEPTEMBER 2007

(Replaces Information Bulletin #72 dated January 2003)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: S Corporation and Partnership Mandate to File a Composite Return on Behalf of Nonresident Shareholders and Partners

REFERENCES: IC 6-3-4-12, IC 6-3-4-13, IC 6-3-4-15

Effective for taxable years beginning after December 31, 2007, an S corporation or partnership shall file a composite adjusted gross income tax return on behalf of all nonresident shareholders or partners. Due to the similar treatment of composite returns for corporations and partnerships, whenever this bulletin mentions "corporation" or "shareholder", it refers to the S corporation or partnership and the shareholder or partner, respectively. The individual nonresident shareholders will be relieved of the obligation to file an individual adjusted gross income tax return unless they have income from other Indiana sources.

Any shareholder that is a corporation or partnership must be excluded from the composite return.

The following limitations and conditions shall apply to those shareholders included in the composite return:

- a) any short term capital gain (loss) plus any long term capital gain (loss) specifically allocated to partners shall be allowed subject to any "passive activity" loss limitations pursuant to IRC Section 469 and capital loss limitations imposed on noncorporate taxpayers by IRC Section 1211;
- b) no deduction shall be permitted for interest paid on investment indebtedness under Section 163(d) of the IRC (limitation on investment interest indebtedness);
- c) no deduction shall be permitted for net operating losses;
- d) no personal exemptions shall be permitted;
- e) no deduction shall be allowed for charitable contributions allowed or allowable pursuant to Section 170 of the IRC;
- f) any college credit for individual contributions is limited on the composite return to the lower of each shareholder's state tax liability or \$100 (no joint credit with spouse is permitted);
- g) no credit is permitted for taxes paid to other states;
- h) no credit carryovers are permitted.
- i) any refund of state and/or county taxes will be remitted directly to the corporation.

Composite Filing Procedures

- 1) (a) Prepare a comprehensive schedule which sets out the calculation of tax attributable to each individual nonresident shareholder. Indicate the names, addresses and Social Security numbers of all nonresident individuals required to be included in the composite return. Subject to the limitations above, separately compute the Indiana tax liability of each individual nonresident shareholder. Attach this schedule to the Small Business Corporation Return (Form IT20S) or the Partnership Return (Form IT-65).
- (b) For a partnership, composite income means each individual nonresident partner's distributive share of income from the partnership which is derived from sources within Indiana as determined by the use of the apportionment formula described in IC 6-3-2-2(b) on the partnership's income.
- (c) Any limitations imposed on the respective shareholders by Section 469 of the Internal Revenue Code (passive activity loss rules) will apply to the composite return.

- 2) On Form IT-20S or IT-65 enter the total tax liability of those nonresidents included in the composite return. Insert this amount on the line for "total composite tax".
- 3) Insert the total tax withheld on behalf of the nonresident shareholders included in the composite return on the line for "total composite tax return credits." This amount plus the total tax withheld on behalf of the nonresident shareholders not included in the composite return should conform to the Annual Reconciliation of Withholding (Form WH-3).
- 4) On a monthly or quarterly basis, using Form WH-1 (Employers Withholding Tax Return), submit withholding tax payments on behalf of all nonresident shareholders along with any withholding for corporate employees.
- 5) File copy A of Form WH-18 (Indiana Miscellaneous Withholding Tax Statement for Nonresidents) with the Department together with Form WH-3 (Annual Withholding Reconciliation) by February 28 of each year.

Copy B should be given to the recipient for their records.

Copy C should be attached to the composite return.

Copy D is for the payer's records.

Form WH-3 is mailed automatically to the payer in January of each year.

The corporation filing a composite return for the nonresident shareholders is liable for the tax shown on the return, and for any additional tax, interest, and penalty as a result of a subsequent audit and examination. A penalty of \$500 is imposed on the S corporation or partnership that fails to file a composite return for all nonresident individual shareholders/partners.

The composite return shall be due with the corporation return. If the IRS allows the corporation an extension on its federal income tax return, the corresponding due dates for its Indiana income tax returns are automatically extended for the same period, plus 30 days.

A handwritten signature in black ink that reads "John Eckart". The signature is fluid and cursive, with a large loop at the end of the last name.

John Eckart
Commissioner